

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BETHANY A. BRIDWELL and SEAN D.
MCQUEEN,

Respondents-Appellants.

UNPUBLISHED

October 25, 2002

No. 233049

Livingston Circuit Court

Family Division

LC No. 99-300025-NA

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

Respondents initially contend that the Wayne Circuit Court lacked jurisdiction over this case and that all orders entered after the case was temporarily transferred to that court are void ab initio. We disagree.

It is undisputed that the child in this case was born and remained in a hospital located in Oakland County. Therefore, this case was properly initiated in the Oakland Circuit Court. See MCL 712A.2(b). The Oakland Circuit Court subsequently transferred the case to Wayne County because proceedings were pending there involving respondents and their other children. Because respondents did not object to this transfer, we review their present challenge for plain error affecting their substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); see also *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993) (exercise of a trial court's jurisdiction can only be challenged on direct appeal and not by collateral attack).

According to MCR 5.926(D)(1), a child protection proceeding may be transferred to another county for the convenience of the parties and witnesses. See also MCR 5.961(B)(7); MCR 3.206(A)(4). In the instant case, proceedings involving respondents were already pending

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

in Wayne County at the time of the transfer. Moreover, respondents other children, caseworkers, and service providers were located in Wayne County. On this record, respondents have failed to demonstrate plain error.

Respondents next claim that reversal of the trial court's termination order is required because the Wayne Circuit Court erroneously removed the child from the maternal great-grandmother's custody and placed her into foster care. We disagree.

The Oakland Circuit Court originally placed the child with the great-grandmother as the most family-like setting immediately available that was consistent with the child's needs. See MCL 712A.13a(10); MCR 5.965(C)(4). However, the Wayne Circuit Court had authority to reconsider that placement decision after the case was transferred. MCL 712A.13a(12). Moreover, the procedure for challenging a change of placement did not apply in this case because, among other things, the child was moved less than thirty days after the initial removal from respondents' custody. MCL 712A.13b(1)(b)(ii). Nevertheless, respondents fail to cite any authority to support their proposition that an error in placement is grounds for reversing an otherwise proper termination decision. Respondents may not simply announce a position and leave it to this Court to discover and rationalize the basis for their claim. *Joerger v Gordon Food Service, Inc.*, 224 Mich App 167, 178; 568 NW2d 365 (1997).

We further note that to the extent the trial court's placement decision could be considered erroneous, the record provides no basis for concluding that reversal of the order terminating respondent's parental rights would be justified. The respondents' parental rights were not terminated because of any lack of bonding or relationship with the child that resulted from the child's removal from the great-grandmother's care. Rather, respondents' parental rights were terminated because of their long history of involvement with the Family Independence Agency and the juvenile court system and their continual failure to benefit from the services offered.

Respondents also argue that the trial court clearly erred in finding that the statutory ground for termination was established. We disagree.

The psychologist who evaluated respondents indicated that the child would not be safe in their care unless they addressed the cognitive and potentially psychiatric problems identified during testing. However, respondents never addressed these problems and failed to comply with other pertinent provisions of the parent-agency agreement. Despite numerous opportunities to improve, both in this case and in prior cases, respondents failed to take full advantage of the services offered. Consequently, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondents ultimately contend that the phrases "substantially comply," "reasonable expectation," and "reasonable time," as used in MCL 712A.19a(6), MCR 5.973(C)(4)(b), and MCL 712A.19b(3)(g), are unconstitutionally vague and overbroad. Specifically, respondents maintain that these provisions fail to provide fair notice of the conduct prohibited, encourage arbitrary enforcement, and are generally overbroad. We disagree. Statutes are generally presumed to be constitutional and the opposing party bears the burden of overcoming this presumption. *In re AH*, 245 Mich App 77, 82; 627 NW2d 33 (2001). Because respondents did

not raise these constitutional claims in the trial court, we review them for plain error affecting their substantial rights. *Carines, supra*.

“[A] statute is not vague if the meaning of the disputed words ‘can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning.’” *In re Gosnell*, 234 Mich App 326, 334-335; 594 NW2d 90 (1999), quoting *People v Cavaiani* 172 Mich App 706, 714; 432 NW2d 409 (1988). This Court has held that use of “the reasonable person standard serves to provide fair notice of the type of conduct prohibited, *as well as* preventing abuses in application of [legislation].” *Plymouth Charter Twp v Hancock*, 236 Mich App 197, 201-202; 600 NW2d 380 (1999) (emphasis added); see also *In re Gentry*, 142 Mich App 701, 707, 712-713; 369 NW2d 889 (1985). Similarly, the word “substantial” has an ordinary and commonly accepted meaning and, therefore, provides fair notice of what is expected and does not encourage arbitrary enforcement. See *Random House Webster’s College Dictionary* (2d ed); *Black’s Law Dictionary* (7th ed).

We further find that because respondents’ conduct is clearly covered by the terms of the challenged provisions, they have failed to demonstrate standing to raise an overbreadth challenge. *Gentry, supra* at 708-709. Respondents’ inability to comply with the parent-agency agreement amounted to a failure to address issues that were specifically identified as critical to their child’s safety. If the child were to be returned to their care, their failure to substantially comply with the plan would place the child at substantial risk of harm. In light of respondents’ displayed attitudes and failure to comply with virtually identical provisions in their previous cases, the trial court was justified in concluding that there was no reasonable possibility that they would be able to provide proper care within a reasonable time, given the age of the child.

Accordingly, we conclude that respondents failed to demonstrate plain error with regard to their constitutional challenges.

Affirmed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Robert J. Danhof